

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

FLORIDA MEN'S MEDICAL CLINIC, LLC  
d/b/a MASSACHUSETTS MEN'S MEDICAL  
CLINIC, MASSACHUSETTS MEN'S MEDICAL  
and MEN'S MEDICAL CLINIC, MEN'S  
MEDICAL CLINIC, LLC, KEVIN HORNSBY,  
M.D. and HEIDI HORNSBY,

Defendants.

CIVIL ACTION  
No. 1:15-cv-13048-DJC

**MEMORANDUM OF LAW IN SUPPORT OF  
THE COMMONWEALTH'S MOTION TO REMAND**

Attorney General Maura Healey, on behalf of the Commonwealth of Massachusetts (the "Commonwealth"), respectfully submits this memorandum of law in support of the Commonwealth's motion to remand this case to the Superior Court, Suffolk County because there is no subject matter jurisdiction in this Court over this case. There can never be diversity jurisdiction over the Commonwealth, and, thus, Defendants' removal was improper, since that was the only purported basis for federal subject matter jurisdiction.

**BACKGROUND**

Attorney General Maura Healey brought this action on behalf of the Commonwealth in the public interest pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 4, and other laws of the Commonwealth against Defendants for unfair and deceptive acts and practices. See generally Complaint, Exhibit A to the Notice of Removal. Defendants removed this action by notice dated July 28. The sole purported basis for subject matter jurisdiction was

that “[t]his court has diversity jurisdiction under 28 U.S.C. [§]1332 . . . . [because] plaintiff is the Commonwealth of Massachusetts and defendants are all citizens of Florida.” Notice of Removal ¶¶ 8-9.

### **ARGUMENT**

#### **This Case Must Be Remanded Because There Is No Subject Matter Jurisdiction.**

Since this Court lacks subject matter jurisdiction of this state law action, it must be remanded to state court. “By the express terms of the statute, the diversity jurisdiction does not ever extend to the states. . . .” U.S.I. Properties Corp. v. M.D. Construction Co., 230 F.3d 489, 499 (1st Cir. 2000) (citing 28 U.S.C. § 1332). Specifically, the Commonwealth is not a “citizen[]” of a state. 28 U.S.C. § 1332(a). Cf. Northeast Federal Credit Union v. Neves, 837 F.2d 531, 533 (1st Cir. 1988) (quoting Postal Telegraph Cable Co. v. Alabama, 155 U.S. 482 (1894) (“As the Court held long ago: ‘A State is not [itself] a citizen. And under the Judiciary Acts of the United States, it is well settled that a suit between a State and a citizen or corporation of another State is not between citizens of different States; ...’”). Accordingly, as the Commonwealth is the plaintiff, Defendants’ sole claim of federal subject matter jurisdiction—diversity—fails. “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). This case must be remanded.

**CONCLUSION**

For all the foregoing reasons, the Commonwealth of Massachusetts respectfully requests that the Court grant this motion and grant such other and further relief as it deems just and proper.

Dated: August 6, 2015

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its Attorney,  
MAURA HEALEY  
ATTORNEY GENERAL

/s/ Eric Gold  
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**Certificate of Service**

The undersigned counsel hereby certifies that on this 6th day of August, 2015, this document was filed through the Electronic Case Filing system and thus copies will be sent electronically to any registered participants as identified on the Notice of Electronic Filing (NEF) and a true copy of the above document was served upon each Defendant by mail.

/s/ Eric Gold  
Eric Gold